CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date	End Date	Agency Tracking #	Edison Record ID
7/1/2016	12/31/2021	31786-00134	50292

Contractor Legal Entity Name	Edison Vendor ID
POMCO, Inc.	7888

Goods or Services Caption (one line only)

Administrative services for State's self-insured Medicare Supplement Plan

Contractor	CFDA #
☒ Contractor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017			$2,715,300		$2,715,300
2018			$2,715,300		$2,715,300
2019			$2,715,300		$2,715,300
2020			$2,715,300		$2,715,300
2021			$2,715,300		$2,715,300
TOTAL:			$13,576,500		**$13,576,500**

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)

☐ Tennessee Small Business Enterprise (SBE): $10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☒ Competitive Selection	RFP
☐ Other	

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Federico M. Hilly 6/14/2016

Speed Chart (optional)	Account Code (optional)
	78901000 Cm

CONTRACT
BETWEEN THE STATE OF TENNESSEE, STATE INSURANCE COMMITTEE AND POMCO, INC.

This Contract, by and between the State of Tennessee, State insurance Committee ("State") and POMCO, Inc. ("Contractor"), is for the provision of administrative services for a self-insured Medicare Supplement Plan ("Plan"), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is For-Profit Corporation
Contractor Place of Incorporation or Organization: New York
Contractor Edison Registration ID # 0000007888

A. SCOPE OF SERVICES ("Scope"):

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

a. The Contractor agrees to provide services under an administrative services only arrangement for the State's self-insured Medicare Supplement Plan in accordance with the Contract and the *Plan Document and Summary Plan Description for The Tennessee Plan (Medicare Supplement Benefit Plan)*. Services shall be delivered to eligible retirees and their dependents of the State of Tennessee, Higher Education Institutions, Local Education Agencies, Local Government Agencies, and eligible retired county judges and officials. The Contractor recognizes the State will set the premium rates for the Plan and may elect to adjust the State contribution for those enrolled ("Members") in the Plan. The Contractor agrees the State's decisions on the premium rates and contribution are final and not subject to appeal.

b. The Contractor shall accept confirmation from the State of the in-force status of each Member's coverage and confirm the eligibility of each claimant as claims are submitted, on the basis of enrollment information maintained electronically in the State's computer system (known as "Edison") and provided electronically to the Contractor for housing in the Contractor's computer system.

c. The Contractor shall accept and process claims filed directly by Members, Providers, and/or Medicare Part A and Part B Fiscal Intermediaries. The Contractor shall be responsible for claims adjudication through the end date in Contract section B, which includes claims with expenses incurred from January 1, 2017 through December 31, 2021.

d. The Contractor shall provide customary corporate office services and functions, including but not limited to, accounting, administration, call center, claims payment, and medical underwriting for applicants who did not apply during their guaranteed issue period.

e. The Contractor shall provide advice and assistance with regard to questions as raised by the State, Members, employees, retirees, and dependents.

f. The Contractor shall provide advice, assistance, and information regarding applicable Federal and State laws, court holdings and regulations affecting Medicare Supplement plans, and other Plan related matters as needed.

g. The Contractor shall accept all current Members' coverage transferred from the prior contract, without any break or lapse in coverage.

h. The Contractor shall furnish information to each claimant regarding the payment or rejection of claims.

Staffing

a. The Contractor shall provide and maintain qualified personnel and staffing to provide the deliverables and services in accordance with this Contract.

b. The Contractor shall ensure that all staff, including the Contractor's employees, independent contractors, consultants, and subcontractors, performing services under this contract, has the experience and qualifications to perform the applicable services.

c. The Contractor shall designate an Account Manager and a back-up with overall responsibility for the State Plan for the duration of the Contract. The Account Manager shall serve as the single point of contact for the State and have overall responsibility for the Contractor's functions under the Contract. The Account Manager shall have the authority to make decisions and resolve problems on behalf of the Contractor with the State.

d. In addition to the Account Manager, the Contractor shall designate a Customer Service Manager, who shall manage the Call Center operations and staff for the duration of the Contract.

e. The Contractor shall also designate an Information Systems Project Coordinator who shall be responsible for implementation of the systems requirements necessary to administer the Plan and interface with the State.

f. All key Contractor project staff shall attend a project kick-off meeting at the State of Tennessee offices in Nashville, TN within the first thirty (30) days after the Contract Award Date.

g. The Contractor shall train its representatives/operators and other staff regarding the provisions of the State's Plan. The Contractor's staff shall successfully complete the training program prior to assuming their duties. The Contractor shall conduct regular staff refresher training to address current Plan benefits, process, and policy.

h. For work under this Contract, the Contractor shall employ no employees or contract with subcontractors that are on the U.S. Department of Health and Human Services' Office of Inspector General (OIG) exclusions list unless the Contractor receives prior, written approval from the State.

i. The Contractor agrees that, prior to the execution of the Contract, it will provide the State with a list of the subcontractors that will be utilized in connection with this Contract and will provide reasonable advance notice of any additional subcontractors that may be used. The State may approve or disapprove the Contractor's Subcontractors or its staff assigned to this Contract if the State is not satisfied with the service delivered by the subcontractor or its staff. Should the State disapprove of any particular subcontractor, the Contractor will work with the State in good faith to procure a reasonable alternative subcontractor. The State may also direct the Contractor to replace staff members providing core services and/or interacting regularly with the State as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.

j. Key personnel commitments made by the Contractor shall not be changed unless prior approval is received from the State. For these purposes, such commitments shall include any named individuals in the proposal and the levels of effort proposed. The Contractor shall notify the State at least fifteen (15) days in advance of proposed changes and shall submit justification (including proposed substitutions) in sufficient detail to the State to evaluate the impact upon the Contract.

k. The Contractor shall survey State staff named by the State annually to determine the State's satisfaction with the Account Team and report the results of the survey to the State (see Contract Attachment C – Reporting Requirements # 8).

A.3. Call Center

a. The Contractor shall maintain a Call Center and provide a dedicated toll-free line, by the date specified in A.15.e.10. for the exclusive purpose of responding to Member inquiries. The Contractor shall provide advice and assistance to Members regarding issues such as, but not limited to, benefits, claims status, and underwriting applications.

b. Call Center Requirements

(1) The Contractor shall operate a Call Center that uses a designated toll–free number as the "front-end" entry point for callers. The Contractor's Call Center shall have designated representatives/operators to respond to inquiries from Members.

(2) The Contractor's call center and staff shall be located in the continental United States.

(3) The Contractor's Call Center shall accept calls, at a minimum, from 7:00 a.m. to 4:30 p.m. Central Time (CT), Monday through Friday.

c. Call Center Processes

(1) The Contractor's call center shall maintain a monthly average rate of thirty (30) seconds or less for the Average Speed of Answer (ASA)

(2) The Contractor's call center shall maintain a monthly average rate of eighty-five percent (85%) for First Call Resolution.

d. The Contractor shall provide statistics related to the call center performance standards above to the State on a weekly basis during the thirty (30) days prior to the go-live date through sixty (60) days after the go-live date. After sixty (60) days from the go-live date, the call center statistics report shall be submitted to the State only on a monthly basis. (See Contract Attachment C – Reporting Requirements # 6)

e. The Contractor's call center shall have call management systems and communications infrastructure that can manage the potential call volume and achieve the performance standards described in this Contract.

f. The Contractor's call management systems shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes where applicable, in response to Plan, benefit, or enrollment changes.

g. The Contractor's call management systems shall be equipped with caller identification. In addition, the Contractor's call center shall adopt caller identification for itself.

h. The Contractor's call management system shall record and index all calls such that the Contractor can easily retrieve recordings of individual calls based on the phone number of the caller, the caller's name, the date/time of the call and the staff member who handled the call. The Contractor shall be able to provide a full recording of each call upon the State's request. The Contractor shall archive the recordings for one year from the date of each call.

i. The Contractor may use an automated interactive voice response (IVR) system for managing inbound calls, provided that the caller always has the ability to leave the IVR system and wait in the queue in order to speak directly with a live-voice call center staff member rather than continuing through additional prompts.

j. The Contractor shall have the ability to make outbound calls without interrupting the ability of callers to continue to access the call center.

k. The call management system shall enable the logging of all calls, including:

(1) The caller's identifying information (e.g., Edison employee ID);

(2) The call date and time;

(3) The reason for the call;

(4) The member services representative that handled the call;

(5) The length of call; and

(6) The resolution of the call and if unresolved, the action taken and follow up steps required.

l. Additionally, the call management system shall maintain a history of correspondence and call transactions for performance management, quality management and audit purposes. This history shall contain the actual information, a date/time stamp that corresponds to when the transaction took place, the origin of the transaction (e.g., the State and /or one of its authorized representatives or the Member), and the member services representative that processed the transaction. Related correspondence and calls shall be indexed and properly recorded such that they can be treated in reporting and analysis as part of a distinct transaction.

m. Call Center Systems Access: The Contractor's call center staff shall have access to claims management and other systems as necessary to respond to inquiries from members.

A.4. Member Communications/Materials

a. The Contractor shall, in consultation with and following written approval by the State, develop and disseminate Member information and communication materials (hereinafter referred to as Member materials). Member materials shall include, but are not limited to, identification cards, Member handbooks, administrative forms, letters, manuals, brochures, fliers, webinars and online videos. This provision excludes enrollment forms, which are the State's responsibility.

b. Member materials shall be finalized (including State review and sign-off) and ready for distribution on a date established by the State.

c. In addition to the Member materials referenced above, the Contractor shall assist the State, if requested, in the education and dissemination of general information regarding the Plan. This assistance may include but not be limited to:

(1) Written information;

(2) Audio/video presentations;

(3) Attendance at meetings, workshops, and conferences; and

(4) Educating State staff and other persons on Contractor's administrative and benefits procedures.

d. Unless otherwise specified in this Contract, the Contractor shall be responsible for all costs related to the design, development, printing, distribution, mailing (if applicable), and revision of all Member materials that are required to be produced under the terms of this Contract.

e. If the State requires mailings above those identified in the contract, the State shall pay the postage, printing and production costs of such mailings pursuant to Contract Sections C.3.d. and C.3.e.

f. Unless otherwise directed by the State, the Contractor shall obtain approval in writing from the State prior to using or distributing any Member materials.

g. The Contractor shall work in conjunction with the State's communications staff to ensure continuity of branding across all program and Member materials, website, and any other communications information. This branding shall include, but is not limited to, use of the ParTNers for Health logo, color scheme and applicable taglines. All uses of these branding elements shall be subject to prior written approval by the State.

h. The Contractor shall have the exclusive responsibility to write, edit, and arrange for clearance of materials (such as securing full time use of a stock photograph for perpetuity) for any and all member materials in time for the materials to be approved by the State and printed.

i. The Contractor shall ensure that its member materials are culturally sensitive and professional in content, appearance, and design.

j. The Contractor shall prominently display the Contractor's call center telephone number and website address in large, bolded typeface on all Member materials, unless otherwise approved by the State.

k. The Contractor shall, to the extent practicable, use relatively large and legible fonts in its Member materials. Additionally, the Contractor shall make maximum use of graphics to communicate key messages to populations with limited literacy or limited English proficiency.

l. Unless otherwise prior approved in writing by the State, the Contractor shall design all member materials at the sixth (6.0) grade level or lower using the Flesch-Kincaid Index or other suitable metric that the State prior approves in writing. The Contractor shall evaluate materials using the entire text of the materials (except return addresses). When submitting draft materials to the State for approval, the Contractor shall provide a reading level analysis and certification of the reading level of each piece of material.

m. The Contractor covenants that all materials distributed to Members and prepared or produced by the Contractor shall be accurate in all material respects.

n. The Contractor shall ensure that up-to-date versions of all printed Member materials can be downloaded from its website/portal.

o. The number of Member handbooks and other relevant information to be printed shall be in sufficient quantities for distribution by the Contractor to the State's Subscribers, plus a quantity of handbooks and brochures as requested by the State for distribution to potential new Members.

p. At the State's request, the Contractor shall attend meetings, workshops, and conferences to discuss and market the Plan. Any on-site visits to agencies covered under this plan shall require prior approval by the State.

q. Prohibition on Promotional Materials: Unless approved in advance and in writing by the State, the Contractor shall not distribute any promotional materials or gifts to employees or Plan members, even if such gifts are of a deminimus value (e.g., magnets, pens, etc.).

A.5. <u>Member Identification Cards</u>

a. The Contractor shall provide Members with identification (I.D.) cards following initial enrollment and thereafter only when a change is necessary. The cost of this item shall be

borne by the Contractor. The State reserves the authority to review I.D. cards prior to issuance for use. The Contractor shall mail identification cards to Members no later than the date specified in Contract section A.15.e.13. During the benefit year the Contractor shall mail I.D. cards to new members no later than ten (10) days from receipt of new enrollment and I.D. cards to existing members upon change in enrollment, as indicated in the enrollment information from the State and no later than ten (10) days from receipt of a Member's request for a replacement or duplicate card (at no charge to the member).

b. The Contractor shall have the capability on its website (see Contract Section A.7.j.) to allow Members to print out temporary cards.

c. The Contractor shall use the State's Edison person identification number (not Social Security Number) as the primary unique identifier for Members and shall include this number as the Member's identification number on the identification card.

A.6. Member Handbooks

a. The Contractor, following review and approval by the State, shall update, print and distribute, upon the State's request, Member handbooks and shall maintain on its website an up-to-date version of the Member handbook.

b. The Member handbook shall be specific to the Plan and shall detail benefits and provide other information helpful to Members.

c. The Contractor shall distribute the Member handbook with a cover letter, if requested by the State, to every Subscriber no later than the date specified in Contract section A.15.e.13. and thereafter if requested by the State.

d. During the benefit year the Contractor shall mail handbooks to new members, if requested by the State, no later than ten (10) days from receipt of new enrollment. With the State's approval, electronic means may be utilized to provide the Member handbook.

e. Upon the State's request, the Contractor shall provide Member handbooks to specified parties, e.g., Agency Benefits Coordinators, within fifteen (15) days of the State's request to provide copies.

f. The Contractor shall provide an electronic copy of the Member handbook to the State for posting on the State's website.

A.7. Website

a. In addition to the Contractor's own website where Plan and Member specific information shall be incorporated, the Contractor shall maintain a "splash" page dedicated to and customized for this Contract containing general plan information that does not require a Member to login. The design of the splash page, inclusive of the site map, page layout, color/font scheme and branding, static content and any documents which can be accessed via, or downloaded from, the website and must be prior approved in writing by the State. Additionally, the Contractor shall obtain prior written approval from the State for any links from the site to an external website/portal or webpage.

b. The Website shall be fully operational on or before the date specified in contract section A.15.e.14.

c. Unless otherwise approved by the State, the Contractor shall update content and/or documents posted to the website within five (5) business days of the State's approval of changes to said content and/or documents.

d. The Contractor shall provide all information pertinent to each new Plan year on the website/portal by the date specified by the State.

e. The Contractor shall grant the State access to the customized development splash page and website for review and approval no later than the date specified in Contract Section A.15.e.15.

f. The Contractor shall host the website/portal on a non-governmental server, which shall be located within the United States.

g. The Contractor shall ensure that the website/portal meets all of the capacity, availability, performance and security requirements outlined in Contract Sections A.10. and A.11.

h. The Contractor shall cover the cost of the transfer of the domain name for the website/portal from the State of Tennessee to the Contractor. The Contractor shall transfer ownership of the domain name to the State upon termination of this Contract without delay and at no cost to the State.

i. To ensure accessibility among persons with a disability, the Contractor's website shall comply with Section 508 of the Rehabilitation Act of 1973 (29 USC Section 794d) and implementing regulations at 36 CFR 1194 Parts A-D.

j. At a minimum the website shall contain a home page with general information and links to additional information including, but not limited to, the Plan Document, benefits, frequently asked questions (FAQs), the Member handbook, replacement or temporary id card, forms, and other information as requested by the State.

A.8. Administrative Services

a. The Contractor, upon request by the State, shall review and comment on proposed revisions to the benefits provisions in the Plan. When so requested, the Contractor shall comment in regard to:

(1) industry practices;

(2) the overall financial impact to the Plan;

(3) necessary changes in the Contractor's reporting requirements; and/or

(4) system changes required to administer any revised Plan provisions.

b. The Contractor shall provide advice, assistance and information to the State regarding applicable existing and proposed Federal and State laws and regulations affecting the Plan.

c. The Contractor shall provide advice and assistance with regard to questions as raised by the State, individual employees/retirees, former Members and others identified by the State.

d. The Contractor shall refer calls regarding eligibility and premium payment issues to the State.

e. The Contractor shall respond to all inquiries in writing from the State within three (3) business days after receipt of said inquiry. In cases where additional information to answer the State's inquiry is required, the Contractor shall notify the State within two (2) business days as to when the response can be furnished to the State. For matters designated as urgent by the State, the Contractor shall provide a response to the State within four (4) hours during normal business hours. During non-business hours, the Contractor shall provide a response to urgent matters to the State within twenty-four (24) hours. Staff members, from the applicable business unit, with final decision making authority shall provide responses. Said responses may be communicated through the Account Manager.

f. The Contractor shall answer, in writing, within five (5) business days, all written inquiries from Members concerning the status of claims submitted, all benefits available through the benefit option, its clarifications and revisions, and other relevant information.

g. The Contractor shall establish a formal grievance procedure for Members and providers to appeal decisions in regard to administration of the program and to resolve disputes that may arise in the administration of the program. The Contractor shall provide the State with a written copy of this grievance procedure by the date specified on contract section A.15.e.16, and the State reserves the right to require changes in the procedures when appropriate.

h. To maintain the privacy of personal information, the Contractor shall enable Transport Layer Security (TLS), or other encryption software as directed by the State, on the mail server used for daily communications between the State and the Contractor. TLS, or other protocols that provide data encryption, shall be enabled no later than the go-live date as listed in contract section A.15.e.17. and shall remain in effect throughout the term of the contract unless otherwise directed by the State.

i. The Contractor shall meet with representatives of the State periodically, but no less than annually, to discuss programmatic, operational and contractual issues related to the Plan. The Contractor shall have in attendance the staff requested by the State, which shall include the Account Manager and representatives from the Contractor's organizational units required to respond to topics indicated by the agenda. These meetings will take place at the State of Tennessee offices in Nashville, TN. Quarterly meetings between the Contractor and the State may also be held upon request by either the Contractor or the State. However, at its discretion, the State may allow the Contractor to participate in quarterly meetings by teleconference.

j. The Contractor shall perform, following review and approval by the State, annual customer satisfaction surveys. The survey instrument shall be developed and approved by the State by the date specified in Contract Section A.15.e.19. The survey shall be conducted at a time mutually agreed upon by the State and the Contractor and shall involve a statistically valid random sample of State members. The Contractor shall guarantee a statistically valid response rate consistent with the sample size. Based upon the results of the survey, the Contractor and the State shall jointly develop an action plan to correct problems or deficiencies identified through this activity.

k. The Contractor shall not modify the services or benefits provided to Members during the term of this Contract without the prior written consent of the State.

l. The Contractor shall refer all media and legislative inquiries to the State's Division of Benefits Administration, which will have the sole and exclusive responsibility to respond to all such queries. However, the Contractor shall respond directly to audit requests from the Comptroller, to audit requests from divisions within the Department of Finance & Administration, and to subpoenas; in all such instances, the Contractor shall copy the State's Division of Benefits Administration on all correspondence.

m. Unless prior approved in writing by the State and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.

n. The Contractor shall ensure that the U. S. Postal Service or other mailing service does not return any undeliverable mail to the State.

Claims Processing, Payment and Reconciliation

a. The Contractor shall process all medical claims in strict accordance with the Plan Document. The Contractor shall not modify covered benefits during the term of this Contract without the prior written approval of the State.

b. Upon request by the State, the Contractor shall modify its systems and processes to reflect approved plan design changes including, but not limited to, changes in covered benefits and scope of covered benefits within sixty (60) days of notification by the State. Should said change(s) not be effective within sixty (60) days, the Contractor shall have until the effective date of the change to modify its systems and processes.

c. The Contractor shall process claims in an accurate and timely manner and in accordance with the requirements in Contract Attachment B. Performance Guarantees 13, 14, and 15. Claims payment accuracy shall be ninety-eight percent (98%) or higher, claims processing accuracy shall be ninety-seven percent (97%) or higher, and claims processing turnaround shall be ninety-eight (98%) or higher of clean claims within 21 calendar days.

d. The Contractor shall provide hard copy and electronic versions of claim forms with instructions, as needed, to Members.

e. The Contractor shall confirm eligibility of each member as claims are submitted, on the basis of the enrollment information provided by the State, which applies to the period during which the charges were incurred.

f. In concert with its claims payment cycle, the Contractor shall provide an electronic remittance advice (RA) to the provider indicating the disposition of every adjudicated claim submitted by the provider. The remittance advice shall contain appropriate explanatory remarks related to payment or denial of each claim. If a claim is partially or totally denied due to insufficient information and/or documentation, then the remittance advice shall specify all such information and/or documentation. Providers that do not have the capability of receiving an RA electronically may have one mailed to them.

g. An incomplete claim may be resubmitted with the information necessary to complete the claim. This resubmission shall constitute a new claim only for the purpose of establishing a timeframe for claims processing and payment.

h. Explanation of Benefits (EOB)

The Contractor shall generate and mail an explanation of benefits (EOB) to members each time a claim is processed for them. The Contractor may substitute an electronic EOB if requested by the member. The format of the EOB form will be reviewed and approved by the State prior to the effective date of this contract. On an annual basis, the State and Contractor shall review the format and content of the EOB and determine if changes are necessary. If changes are required, an implementation schedule shall be mutually agreed upon for introduction of the revised EOB.

i. The Contractor shall ensure that any payments funded by the State are accurate and in compliance with the terms of this Contract including the Liquidated Damages requirements of this Contract (see Contract Attachment B.13. and 14.), the Plan Document and Summary Plan Description for the Tennessee Plan (Medicare Supplement Benefit Plan), and State and Federal laws and regulations.

j. The State shall determine all policies and benefits related to the Plan. Should the Contractor have a question on policy determinations, benefits, or operating guidelines required for proper performance of the Contractor's responsibilities, the Contractor shall request a determination in writing. The State will then respond in writing making a

determination within thirty (30) calendar days. The Contractor shall then act in accordance with such policy determinations and/or operating guidelines.

k. The State shall have the sole responsibility for and authority to clarify and/or revise the benefits available under the Plan. It is understood between the parties that the Plan cannot and does not cover all medical situations. In a case where the benefits are not referenced in the Plan Document or are not clear, the Contractor shall comply with any applicable policy issued by the State to interpret the Plan Document. If the benefits are not referenced in any policy, or are not clear, the Contractor shall utilize its policies in adjudicating claims, and the Contractor shall advise the State, in writing, as to the difference along with the Contractor's recommendation. Such matters as determined by the State to have a significant impact on administration of plan benefits shall be resolved by the State.

l. The Contractor shall identify and pursue claims that may be subject to coordination of benefits (COB) in accordance with the regulations promulgated by the Tennessee Department of Commerce and Insurance, Chapter 0780-1-53 Tenn. Comprehensive Rules & Regulations. The Contractor shall provide a quarterly report of said activities to the State (refer also to Contract Attachment C.2., Reporting Requirements).

m. The Contractor shall notify the State on a weekly basis of receipt of any notices from Medicare that Medicare may have made primary payments for services when it should have been the secondary payer (a Medicare Secondary Payer demand letter). The Contractor shall resolve issues as to whether Medicare is the primary or secondary payer within thirty-one (31) days of receiving the demand letter.

n. Unless otherwise directed by the State, the Contractor shall comply with the State's requirements regarding Subrogation. The Contractor shall implement new or revised requirements received from the State within sixty (60) calendar days of receipt of the requirements from the State, unless otherwise directed by the State.

o. The Contractor shall respond to all requests from the State for data detailing paid claims incurred within a specified period of time within seventy-two (72) hours of receiving the request using the template prior approved in writing by the State.

p. The Contractor shall submit quarterly claims reports to the State as provided in Contract Attachment C, including but not limited to a quarterly paid claims analysis report (refer to Contract Attachment C.14.), quarterly paid claims lag report (refer to Contract Attachment C.15.), monthly invoice/reconciliation report (refer to Contract Attachment C.2.), and monthly recoveries (refunds) report (refer to Contract Attachment C.3.).

q. For the payment of all claims under this Contract, the Contractor shall issue payments in the form of checks and/or Automated Clearing House (ACH) electronic funds transfer against the Contractor's own bank account. The Contractor shall maintain security and quality controls over the design, printing and mailing of checks, as well as any fraud prevention feature of checks.

r. The State will only pay for approved and correctly paid claims, not for rejected, reversed, or duplicate claims. Additional requirements related to payments are listed in Contract Section C.3.

s. The Contractor shall issue, if applicable, all related U.S. Internal Revenue Service (IRS) Form 1099 reports, submit required 1099 information directly to the IRS utilizing the Contractor's tax ID number, and shall maintain responsibility in matters relating to such information provided to payees and to the IRS, including the payment of any penalties or fees related to such 1099 reporting.

t. The Contractor shall be responsible for processing all claims for medical services rendered or medical supplies purchased with an incurred date of January 1, 2017 through December 31, 2021. The claims payment run-out period shall extend from January 1, 2022 through the final day of the Term of the Contract in section B.1. There shall be no additional administrative cost to the State during the claims payment run-out period. In addition, in the event of termination of this Contract, the Contractor shall continue to provide and pay claims for services to any Member who is hospitalized on the effective date of termination or the end of the contracted benefit period; whichever is earlier. Said coverage shall discontinue when the Member is discharged from the hospital.

u. Fraud and Abuse

(1) The Contractor shall implement procedures to prevent and detect fraud or abuse by providers or members and shall perform fraud investigations of members and providers, in consultation with the State, for the purpose of recovery of overpayments due to fraud.

(2) The Contractor's procedures for preventing and detecting fraud and abuse shall include, at a minimum, claims edits, post-processing review of claims, and utilization management. The Contractor's claim edits shall include, at minimum, edits to identify upcoding and duplicate claims.

(3) In the event the Contractor discovers evidence that an unusual transaction has occurred that merits further investigation, the Contractor shall simultaneously inform Benefits Administration and the Division of State Audit, in the Office of the Comptroller of the Treasury. The State will review the information and inform the Contractor whether it wishes the Contractor to:

i. Discontinue further investigation if there is insufficient justification; or
ii. Continue the investigation and report back to Benefits Administration and the Division of State Audit; or
iii. Continue the investigation with the assistance of the Division of State Audit; or
iv. Discontinue the investigation and turn the Contractor's findings over to the Division of State Audit for its investigation.

(4) The Contractor shall submit to the State, at least two (2) months prior to the go-live date, a description of its fraud and abuse program. The State reserves the authority to review the document(s) and recommend changes, where appropriate. The Contractor shall notify the State, in writing, within thirty (30) calendar days of any significant changes to its programs related to insurance or provider fraud, abuse, and waste. The State reserves the authority to review the change and recommend changes, where appropriate.

(5) The Contractor shall provide a written narrative or report to the State on a quarterly basis regarding the effectiveness of the Contractor's fraud and abuse program, including its fraud and abuse detection activities, findings from those activities, follow-up on findings, proposed improvement activities, and any estimated savings to the Plan associated with the Contractor's detection of such fraudulent or wasteful activities.

A.10. Information Systems

a. The Contractor shall save in its computer system the State's Edison employee identification number for Members and shall include the Edison identification number when communicating with the State about a particular Member.

b. All Contractor systems shall maintain linkages and Subscriber - dependent (e.g., spouse to spouse and parent to child) relationships between initial and related subsequent interactions/transactions/events/activities. Additionally, when the Contractor houses indexed images of documents used by Members and subcontractors to transact with the Contractor, the Contractor shall ensure that these documents maintain logical relationships to certain key data such as member identification and subcontractor identification numbers. The Contractor shall also ensure that records associated with a common event, transaction or customer service issue have a common index that facilitates search, retrieval and analysis of related activities, e.g., interactions with a particular member about the same matter/problem/issue.

c. Upon the State's request, the Contractor shall be able to generate a listing of all Members (including each Member's Edison identification number) that were sent a particular document, the date and time that the document was generated, and the date and time that it was sent to particular Members or groups thereof. The Contractor shall also be able to generate a sample of said document.

d. Retention and Accessibility of Information

(1) The Contractor shall provide and maintain a comprehensive information retention plan that is in compliance with State and Federal requirements.

(2) The Contractor shall maintain information on-line for a minimum of one (1) year, based on the last date of update activity, and update detailed and summary history data for up to two (2) years to reflect adjustments.

(3) The Contractor shall provide within three (3) business days turnaround or better on requests for access to information. Such requests for information shall be made by the State or its authorized designee.

(4) If an audit or administrative, civil or criminal investigation or prosecution is in progress or audit findings or administrative, civil or criminal investigations or prosecutions are unresolved, information shall be kept in electronic form until all tasks or proceedings are complete.

e. Information Ownership. All information, whether data or documents, and reports that contain or make references to said information, involving or arising out of this Contract is owned by the State. The Contractor is expressly prohibited from sharing or publishing State information and reports or releasing such information to external entities, affiliates, parent company, or subsidiaries without the prior written consent of the State.

f. Upon termination of this Contract and request by the State, the Contractor shall provide to the State or its designated agent, pertinent data identified by the State for Members to effect a transition of the Plan from the Contractor. The information shall be furnished in a format and medium as is compatible with the data processing system maintained by the State or its designated agent. Additionally, the Contractor shall provide all information necessary to properly interpret the data supplied. To ensure the continuous operation of the Plan and upon 30 days' notice, this information shall be provided to the State or its designated agent at least 45 days prior to the termination date of this Contract; further, the State may require the Contractor to provide this information at various other times prior to or after the termination date of this Contract.

g. System Availability, Business Continuity and Disaster Recovery (BC-DR)

(1) The Contractor shall ensure that critical Member and other web-accessible and/or telephone-based functionality and information, including the website described in Contract Section A.7. (to be agreed to by the State and the Contractor), are available to the applicable System users twenty-four (24) hours

a day, seven (7) days a week, except during periods of scheduled system unavailability agreed upon by the State and the Contractor. Unavailability caused by events outside of the Contractor's span of control is outside of the scope of this requirement. Notification of any scheduled maintenance shall be posted on the member website/portal. The Contractor shall make efforts to minimize any down-time between 5:00 a.m. and 10:00 p.m. Central Time.

(2) The Contractor shall ensure that the systems within its span of control that support its data exchanges with the State are available and operational according to the specifications and schedule associated with each exchange.

(3) Regardless of the architecture of its systems, the Contractor shall develop and be continually ready to invoke a business continuity and disaster recovery (BC-DR) plan. The BC-DR plan shall encompass all information systems supporting this Contract. At a minimum the Contractor's BC-DR plan shall address the following scenarios:

i. Central and/or satellite data processing, telecommunications, print and mailing facilities and functions therein, hardware and software are destroyed or damaged;

ii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of transactions that are active in a live system at the time of the outage;

iii. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that compromise the integrity of data maintained in a live or archival system; and

iv. System interruption or failure resulting from network, operating hardware, software, communications infrastructure or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system.

(4) The Contractor shall provide the State a written summary of its BC-DR plan and latest test results at least one (1) month prior to the go-live date as shown in contract section A.15.e.20. The Contractor shall provide the State a copy of its BC-DR plan within ten (10) business days of the Contractor's revision of the plan.

(5) The Contractor shall periodically, but no less than annually, test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to the State that it can restore system functions. The Contractor shall submit a written summary of its annual BC-DR test results to the State.

(6) In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall submit to the State a summary of its BC-DR corrective action plan that describes how the failure will be resolved. If the summary results show failure or that remedial action is necessary, the Contractor shall also provide a timeline of how long exposure is and when remediation will be implemented.

(7) In the event of a declared major failure or disaster, as defined in the Contractor's BC-DR plan the Contractor's critical functionality as discussed in Contract Section A.10. shall be restored within seventy-two (72) hours of the failure's or disaster's occurrence.

(8) The Contractor shall maintain a duplicate set of all records relating to this Program in electronic medium, usable by the State and the Contractor for the purpose of disaster recovery or data restoration.

h. Prior to implementing any major modifications to, or replacement of, the Contractor's core information systems functionality and/or associated operating environment, the Contractor shall notify the State in writing of the change or modification within a reasonable amount of time (commensurate with the nature and effect of the change or modification) if the change or modification; (a) would affect the Contractor's ability to perform one or more of its obligations under this Contract; (b) would be visible to State system users and members; (c) might have the effect of putting the Contractor in noncompliance with the provisions or substantive intent of this Contract; or (d) would materially reduce the coverage amounts payable or services provided to the average member. If so directed by the State, the Contractor shall discuss the proposed change with the State prior to implementing the change. Subsequent to this discussion, the State may require the Contractor to demonstrate the readiness of the impacted systems prior to the effective date of the actual modification or replacement.

i. System and Information Security and Access Management Requirements

(1) The Contractor shall make system information available to duly authorized representatives of the State and other State and Federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.

(2) The Contractor's systems shall contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology to be mutually agreed upon by the Contractor and the State.

(3) Audit trails shall be incorporated into all systems to allow information on source data files and documents to be traced through the processing stages to the point where the information is finally recorded.

(4) The Contractor shall provide for the physical safeguarding of its data processing facilities and the systems and information housed therein. The Contractor shall provide the State with access to data facilities upon request. The physical security provisions shall be in effect for the life of this Contract.

(5) Unless the State prior-approves in writing the Contractor's use of alternate mitigating controls, the Contractor shall use Federal Information Processing Standard (FIPS) 140-2 complaint technologies to encrypt all member specific information in motion or rest, including back-up media.

A.11. Data Integration and Technical Requirements

a. The Contractor shall maintain an electronic data interface with the State's Edison System for the purpose of retrieving and processing Member enrollment records and any other files which may be identified and generated by the State. The Contractor shall be responsible for providing and installing the hardware and software necessary. The State requires the use by the Contractor of second level authentication for the exchange of member personal information. This is accomplished using the State's standard software product, which supports Public Key Infrastructure (PKI). The Contractor shall design a solution, in coordination with the State, to connect to the State's Secure File Transfer Protocol (SFTP) server using a combination of the password and the authentication certificate. The initial sign-on and transmission testing will use a password. Certificate testing may also be performed during the test cycle. Subsequent production sign-on will be done using the authentication certificate. The Contractor will then download the file and decrypt the file in its secure environment. The State of Tennessee uses public key

encryption with Advanced Encryption Standard (AES) to encrypt PHI. If the State adopts a different or additional encryption standard or tool in the future, the Contractor shall, with adequate notice, cooperate with the State to maintain the security of protected information according to all applicable State and Federal standards.

b. Notwithstanding the requirement to maintain enrollment data, the Contractor shall not perform changes to enrollment data without the State's request or approval. This prohibition shall include, but not be limited to, initiation, termination, and/or changes of coverage. The Contractor will accept an email from the State requesting an add, change, or termination of a Member in an urgent situation prior to the information being included in the State's Edison 834 enrollment file.

c. At least two (2) months prior to the go-live date, the Contractor shall complete testing of the transmission, receipt, and loading of the enrollment file from the State.

d. At least one (1) month prior to the go-live date, the Contractor shall load, test, verify, and make available online for use the State's enrollment information. The Contractor shall certify, in writing, to the State that the Contractor understands and can fully accept and utilize the enrollment files as provided by the State.

e. The Contractor shall maintain, in its systems, in-force enrollment records of all individuals covered by the Program.

(1) Weekly Enrollment Update: To ensure that the State's enrollment records remain accurate and complete, the Contractor shall, unless otherwise directed by the State, retrieve, via secure medium, the weekly enrollment file from the State, in the State's Edison 834 (5010 file format) (see RFP # 31786–00134, Appendix 7.5 for the current file format), which may be revised. Files will include full population records for all members and will be in the format of ANSI ASC X12N, Benefit Enrollment and Maintenance 834 (5010), version 005010X220A1, with several fields customized by the State.

(2) The Contractor shall complete and submit to the State a Weekly File Transmission Statistics Report within five (5) business days of receipt of the Weekly Enrollment Update. The Contractor shall submit this report via email to designated State staff. (See Contract Attachment C.10.)

(3) The Contractor and/or its subcontractors shall electronically process one hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, within four (4) business days of receipt of the weekly file. The State and the Contractor shall work to develop a process for responding to invalid or non-processed records.

(4) The Contractor and/or its subcontractors shall resolve all enrollment discrepancies as identified by the State or Contractor within one (1) business day of identification.

(5) The Contractor and/or its subcontractors, with collaboration from the State, shall resolve associated system errors, as identified through enrollment discrepancy resolution, in a timeframe mutually agreed upon with the State. The Contractor shall document in an enrollment system modification log, the system error details, the proposed solution, and the final solution as agreed upon by the State. The Contractor shall update and submit this log quarterly (refer also to Contract Attachment C, Reporting Requirements.11.). Subsequent errors identical in nature may be subject to Liquidated Damages as specified in Attachment B.

(6) State Enrollment Data Match: Upon request by the State, not to exceed four (4) times annually, the Contractor shall submit to the State, in a secure manner, its full file of State Members, by which the State may conduct a data match against the State's Edison database. The purpose of this data match will be to determine

the extent to which the Contractor is maintaining its database of State members. The State will communicate results of this match to the Contractor, including any Contractor requirements, and associated timeframes, for resolving the discrepancies identified by the data match.

f. The Contractor shall reconcile, within ten (10) business days of receipt, payment information provided by the State. Upon identification of any discrepancies, the Contractor shall immediately advise the State.

g. The Contractor's systems shall conform to any future federal and state specific standards for data exchange by the standard's effective date.

h. The Contractor shall partner with the State and member agencies in the management of current and future data exchange formats and methods and in the development and implementation planning of future data exchange methods not specific to HIPAA or other federal effort.

i. The Contractor's system(s) shall possess mailing address standardization functionality in accordance with U.S. Postal Service conventions.

A.12. Privacy & Confidentiality

The following privacy and confidentiality standards apply to all forms of assistance that the Contractor provides.

a. The Contractor shall develop, adopt, and implement standards, which are, at a minimum, compliant with the HIPAA statute and the HIPAA privacy and security rules in Title 45, Part 164, Code of Federal Regulations to safeguard the privacy and confidentiality of all Protected Health Information (PHI) about Members. For example, the Contractor shall ensure that it does not have completed forms sitting in public view, left in unsecured boxes or files, or left unattended in any off-site location (*e.g.*, in an automobile). The Contractor's procedures shall include but not be limited to safeguarding the identity of Members as plan members of the Program and preventing the unauthorized disclosure of PHI. The Contractor shall comply with the HIPAA amendments in the American Recovery and Reinvestment Act, Public Law 111-5, the HITECH Act, and any implementing regulations when they become effective.

b. The Contractor shall not use or further disclose PHI other than as permitted or required by HIPAA and the Business Associate Agreement; or as required by law. Use of PHI for , treatment, payment, or health care operations may include disclosure only as permitted by HIPAA, including HIPAA's "minimum necessary" standard or. Contractor shall report to the State any unauthorized use or disclosure of PHI as soon as possible. Contractor shall comply with the HIPAA Breach Notification Rules as required by 45 CFR 164.400 et al, and shall cooperate with the State in responding to any unauthorized use or disclosure of PHI related to this contract.

c. The Contractor shall use appropriate safeguards to prevent the unauthorized use or disclosure of the PHI. The Contractor shall report to the State any unauthorized use or disclosure of the PHI within five (5) business days of any Security Incident of which it becomes aware.

d. The Contractor shall mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of the Federal privacy rule.

e. The Contractor shall provide access to PHI in a "designated record set" in order to meet the requirements under 45 CFR §164.524.

f. The Contractor shall make any amendment(s) to PHI in a "designated record set" pursuant to 45 CFR §164.526.

g. The Contractor shall document disclosures of PHI and information related to such disclosures as would be required to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

h. The Contractor shall (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits, (ii) report to the State any security incident (within the meaning of 45 CFR § 164.304) of which the Contractor becomes aware, and (iii) ensure that any agent of the Contractor, including any subcontractor, agrees to the same restrictions and conditions that apply to the Contractor with respect to such information.

i. The Contractor shall not sell Public Sector Plan member information or use member information unless it is aggregated blinded data, which is not identifiable on a member basis.

j. The Contractor shall not use Public Sector Plan member identified or non-aggregated information for advertising, marketing, promotion or any activity intended to influence sales or market share of any product or service.

k. The Contractor shall have full financial responsibility for any penalties, fines, or other payments imposed or required as a result of the Contractor's non-compliance with, or violation of, HIPAA or HITECH requirements, and the Contractor shall indemnify the State with respect to any such penalties, fines, or payments.

l. The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.

m. At the request of the State, the Contractor shall offer credit protection for those times in which a Member's PHI is accidentally or inappropriately disclosed.

A.13. Audits and Quality Assurance

a. The Contractor shall cooperate fully with audits the State may conduct related to any aspect of the Program the State deems appropriate (at the Contractor's expense). The State may select any qualified persons or organization to conduct the audits. To the extent allowed by applicable law, the State agrees that persons or organizations conducting audits of the Contractor shall be prohibited from disclosing confidential patient records or proprietary or confidential information reasonably designated as such by the Contractor.

b. The Contractor shall maintain an internal quality assurance plan. If requested by the State, the Contractor shall provide a summary of the internal quality assurance plan indicating areas addressed, established criteria and standards and those methods employed to evaluate results.

c. The Contractor shall submit to the State, at least one (1) month prior to the go-live date, a summary of its methodology for conducting internal claims and operational audits, including audits to determine claims payment and processing accuracy and claims payment turnaround. The Contractor shall notify the State in writing at least thirty (30) calendar days in advance of any significant changes to its methodology. The State reserves the authority to review the change and require changes, where appropriate.

CENTRAL PROCUREMENT OFFICE

1. Reporting

a. As required by this Contract (see Contract Attachment C), the Contractor shall submit reports to the State. Reports shall be submitted electronically, in the format specified by the State (e.g. Excel instead of PDF), and shall be of the type and at the frequency indicated below. The State reserves the right to modify reporting requirements as deemed necessary to monitor the Program. The State will provide the Contractor with at least ninety (90) days' notice prior to implementation of a report modification.

b. Unless otherwise directed by the State, the Contractor shall submit reports as required in Contract Attachment C. Unless prior approved in writing by the State, each report shall be specific to the Plan (not the Contractor's book of business).

c. The Contractor shall ensure that reports submitted by the Contractor to the State shall meet the following standards:

(1) The Contractor shall verify the accuracy and completeness of data and other information in reports submitted.

(2) The Contractor shall ensure delivery of reports or other required data on or before scheduled due dates.

(3) Reports or other required data shall conform to the State's defined written standards.

(4) All required information shall be fully disclosed in a manner that is responsive and with no material omission.

(5) Each report shall be accompanied by a brief narrative that describes the content of the report and highlights salient findings of the report.

(6) As applicable, the Contractor shall analyze the reports for any early patterns of change, identified trend, or outliers and shall submit a written summary with the report including such analysis and interpretation of findings. At a minimum, such analysis shall include the identification of change(s), the potential reasons for change(s), and the proposed action(s).

(7) The Contractor shall notify the State regarding any significant changes in its ability to collect information relative to required data or reports.

(8) The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report within the specified timeframe (see Contract Attachment B.10.).

(9) State requirements regarding reports, report content and frequency of submission may change during the term of the Contract. The Contractor shall have at least forty-five (45) days to comply with changes specified in writing by the State.

d. The Contractor shall notify the State, within three (3) business days of identification, about any situation that appears to negatively impact the administration or delivery of the program, plan, or benefits. Failure to do so may result in Liquidated Damages as specified in Attachment B. The situation shall be researched and resolved in a timeframe mutually agreed upon with the State.

A.15. Implementation

a. The Contractor shall provide to the State a comprehensive Implementation Plan no later than thirty (30) days after the Contract Award Date as specified in Contract Section

A.15.e.1. The plan shall outline the steps necessary for the Contractor to submit deliverables by the dates specified in Contract Section A.15.e. for the Contractor to be fully operational by the go-live date of January 1, 2017. This plan shall include a detailed timeline description of all work to be performed both by the Contractor and the State. The implementation plan shall also provide specific details on the following:

(1) Identification, timing, and assignment of significant responsibilities and tasks;

(2) Names and titles of key implementation staff;

(3) Identification and timing of the State's responsibilities;

(4) Processing of test data for appropriate interpretation of data values;

(5) Identification and timing for the testing, acceptance and certification of exchange of data between the Contractor and Edison and other relevant information systems;

(6) Member communications and their timing (consistent with Benefits Administration's larger member communication strategy); and

(7) Schedule of in-person meetings and conference calls with the State.

b. The Contractor shall have a designated full-time implementation team to service this account. All of the Contractor's implementation team members shall have participated, as team members, in the implementation of a Medicare supplement plan for at least one other large client (i.e., a client plan with at least 5,000 members). The Contractor's implementation team shall include a full-time, designated project manager ready to begin work immediately following the contract signing until thirty (30) days after the go-live date. The team shall also include an Account Manager dedicated to this Contract, who will be the main contact with the State for all of the day-to-day matters relating to the implementation and ongoing operations of this Contract. Also, the Contractor shall assign a backup to the Account Manager. An Information Systems Project Manager shall be part of the implementation team. All implementation team members shall be available as needed during the implementation as well as thirty (30) days after the go-live date.

c. Staffing Plan:

(1) As part of its Project Implementation Plan described above, the Contractor shall submit to the State for review and approval a detailed staffing plan. The Contractor shall submit to the State its Staffing Plan with its Project Implementation Plan by the date specified in Contract Section A.15.e.1.

(2) The staffing plan shall provide staffing estimates for all functions and requirements of the Contract, including:

i. Representatives/operators, serving in the Call Center

ii. Contractor supervisory/account management staff; and

iii. Technical Staff, as required to process the State's plan enrollment files from the State's Edison system.

d. The State may conduct a comprehensive readiness review of the Contractor at least sixty (60) days prior to January 1, 2017 in order to ensure that the Contractor is able and prepared to perform all functions required by this Contract and to provide high quality services to Members. Such review by the State may include an on-site review of the Contractor's customer service, claims adjudication facilities and operation. Contractor shall participate in all readiness review activities conducted by the State staff and/or the

State's benefit consultants to ensure the Contractor's operational readiness for all products and services (e.g. claims adjudication, enrollment, member services, reporting requirements, Edison interface, etc.). The State will provide the Contractor with a summary of findings that may include areas requiring corrective action prior to January 1, 2017.

e. Due Dates for Project Deliverables/Milestones

Unless otherwise specified in writing by the State, the Contractor shall adhere to the following schedule for the deliverables and milestones for which it is responsible under this Contract:

	Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
Implementation			
1.	Implementation plan, Staffing Plan and timetable	A.15.a. and c.	Within 30 days post Contract Award Date
2.	All Subcontractors approved by State and copies of the executed subcontracts provided, if requested by the State	A.2.i.	Within 45 days post Contract Award Date
3.	Go-Live	A.1.	January 1, 2017
4.	Kick-off meeting for all key Contractor staff	A.2.f	No later than 30 days after Contract Award Date
5.	State readiness review if requested by State	A.15.d.	November 1, 2016
Staffing			
8.	Staff identified and assigned responsibilities	A.2.a.	30 days post Contract Award Date
9.	Account Team Satisfaction Survey	A.2.k.	Within 60 days after Go-Live
Call Center			
10.	Call center open and accepting calls	A.3.a.	September 12, 2016
11.	Call center statistics	A.3.d.	Weekly from December 1, 2016 through February 28, 2017 and thereafter monthly
Member Communications/Materials			
12.	2017 Member Handbook on website	A.6.a.	September 1, 2016
13.	Member ID cards and Member Handbook mailed to Members	A.5.a., A.6.c.	December 14, 2016
Website			
14.	Web site go-live	A.7.a.	September 1, 2016
15.	State access to website for review	A.7.e.	August 17, 2016
Administrative Services			

	Deliverables/Milestones:	Contract Reference(s):	Deliverable Due Dates:
16.	Grievance procedure description	A.8.g.	November 1, 2016
17.	Transport Layer Security (TLS)	A.8.h.	January 1, 2017
18.	Quarterly meetings with the State	A.8.i.	May 2, 2017
19.	Customer Satisfaction Survey template approved by State	A.8.j.	July 1, 2017
Information Systems			
20.	Business Continuity Disaster Recovery (BC/DR) Results Report	A.10.g.(4)	December 1, 2016
Data Integration & Technical Requirements			
21.	Completion of enrollment file testing	A.11.c.	November 1, 2016
22.	Edison System Interface/Enrollment file acceptance/Enrollment data online	A.11.d	December 1, 2016
23.	Weekly File Transmission Statistics Report	A.11.e.(2)	Within 5 business days of receipt of enrollment file
Reporting			
24.	Confirm with State the format, data needed, and due dates for each required report	A.14. and Contract Attachment C	November 1, 2016
Quality Assurance			
25.	Copy of internal quality assurance plan	A.13.c.	December 1, 2016

A.16. Regulatory Requirements. The Contractor shall immediately notify the State of any pending disciplinary action initiated by the State of Tennessee Department of Commerce and Insurance that may materially impact its ability to perform under this Contract.

A.17. Definitions

a. **Affiliate:** A business organization or entity that, directly or indirectly, is owned or controlled by the Contractor, or owns or controls the Contractor, or is under common ownership or control with the Contractor.

b. **Agency Benefits Coordinator:** The individual within each agency or department who is the officially-designated liaison between Benefits Administration and employees.

c. **Average Speed of Answer (ASA):** The mean time between (a) the moment at which a caller to the Contractor's call center first hears an introductory greeting and enters the queue and (b) the time at which a call center representative at the call center answers the call. For this definition, the term "answer" shall mean to begin an uninterrupted dialogue with the caller. If a call center representative asks the caller to hold during the first 60 seconds of the dialogue, the Contractor shall not consider the call to be "answered" for purposes of this definition until the call center representative returns to the caller and begins an uninterrupted dialogue.

d. **BC/DR:** Business Continuity/Disaster Recovery. Disaster Recovery and its associated planning refer to specific steps that must be undertaken to resume operations in the aftermath of a catastrophic natural disaster or complete technology failure. Business

CENTRAL PROCUREMENT OFFICE

Continuity describes the higher-level processes that must be put in place so that an organization's mission-critical functions can continue during and after a disaster.

e. **Benefits:** The services available to members and the corresponding amounts that Members and the Plan will pay for covered services under this contract.

f. **Benefits Administration:** The division of the Tennessee Department of Finance & Administration that administers the Plan on behalf of the Plan Sponsor.

g. **Business Days:** Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Holidays are excluded.

h. **Calendar Days:** All seven days of the week.

i. **Claim:** Notification to an insurance company requesting payment of an amount due under the terms of the policy.

j. **Claims Payment Accuracy:** The measurement of claims processed with an accurate payment of benefits divided by the total number of claims with payments in the audited population.

k. **Claims Processing Accuracy:** The measurement of claims processed without any type of error divided by the total number of claims in the audited population.

l. **Claims Processing Turnaround:** The time elapsed from the date all information necessary to process a claim is received to the date the claim is processed.

m. **Clean Claim:** A claim received by the Contractor for adjudication that requires no further information, adjustment, or alteration by the provider in order to be processed by the Contractor. In addition to the provider, this includes information, adjustment, or alteration by the Member, the Subscriber, third-party payers (i.e. – Medicare), and/or Plan Sponsor.

n. **Co-insurance:** The percentage paid by the Plan or Member toward the allowable amount of charge (flat dollar amount) for a service provided to a Member.

o. **Co-payment:** The portion of the charge (flat dollar amount) for each medical service provided to a member that is the responsibility of the member

p. **Compliance with Section 508:** To ensure accessibility among persons with a disability, the Contractor's multimedia/video tools, website content shall comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and implementing regulations at 36 CFR 1194 Parts A-D.

q. **Contract Award Date:** The date on which the State Insurance Committee approved entering into a contract with the best evaluated respondent on RFP 31786-00134.

r. **Contract Benefit Period:** January 1, 2017 through December 31, 2021

s. **Days:** Unless otherwise specified, refers to calendar days.

t. **Deductible:** The amount specified in the Medicare Supplement Plan Document that must be paid by each Member prior to payment of any covered benefits by the Contractor.

u. **Deliverable:** A document, manual, or report (in hard copy, electronic format or specific medium as required) that the Contractor submits to the State to fulfill requirements of this Contract.

v. **Denied Claim:** A claim that is not paid for reasons such as eligibility and coverage rules.

w. **Dependent:** A dependent (spouse or child) of a Subscriber.

x. **Edison:** The State's enterprise resource planning system, which supports human resources, payroll, employee benefits, contracting, procurement and other agency functions.

y. **Eligible Retirees and Dependents:** Retirees and their dependents meeting the eligibility requirements as defined in the *PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION FOR THE TENNESSEE PLAN (Medicare Supplement Benefit Plan).*

z. **First Call Resolution**: A retiree or dependent's question(s) is answered during their first call eliminating the need for the Contractor to call back the retiree or dependent.

aa. **Health Insurance Portability and Accountability Act of 1996 (HIPAA):** Title I of HIPAA protects health insurance coverage for workers and their families when they change or lose their jobs. Title II, the Administrative Simplification (AS) provisions, requires the establishment of national standards for electronic healthcare transactions and national identifiers for providers, health insurance plans and employers. The HIPAA Administration Simplification provisions also address the security and privacy of health information.

bb. **Holidays:** Days on which official holidays and commemorations as defined in Tennessee Code Annotated § 15-1-101 *et seq.*, are observed.

cc. **Information Technology (IT):** A combination of computing hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e. structured data (which may include digitized audio and video) and documents; and/or (b) the processing of such information for the purposes of enabling and/or facilitating a business process or related transaction.

dd. **Local Education Agency (LEA) Plan**: Refers to all group insurance plan options sponsored by the Local Education Insurance Committee

ee. **Local Government Plan:** Refers to all group insurance plan options sponsored by the Local Government Insurance Committee.

ff. **Member(s):** Eligible retiree(s) or dependent(s) enrolled in the Medicare Supplement Plan.

gg. **Paid Claim:** A claim that meets all coverage criteria of the Plan and is paid by the Contractor and submitted to the State for reimbursement or applied to the deductible.

hh. **Plan:** *THE TENNESSEE PLAN (Medicare Supplement Benefit Plan)* as defined in this Contract and the *PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION FOR THE TENNESSEE PLAN (Medicare Supplement Benefit Plan).*

ii. **Plan Sponsor:** The State of Tennessee Insurance Committee.

jj. **Plan Year:** January 1 through December 31 of the same calendar year.

kk. **Processed Claim**: The action by the Contractor of adjudicating a claim which results in assigning a status to the claim of denied, paid, or externally pended for missing information needed to process a claim.

ll. **Protected Health Information (PHI):** individually identifiable health information that is transmitted by electronic media, maintained in electronic media; or transmitted or maintained in any other form or medium.

mm. **State, Local Government, and Local Education Insurance Committees:** Policy making bodies for the State, Local Government, and Local Education plans established under Tennessee Code Annotated Title 8; Chapter 27 – 201, 701, and 301 respectively

nn. **State Plan:** Refers to all group insurance plan options sponsored by the State Insurance Committee.

oo. **Subcontractor:** Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the State under the terms of this Contract.

pp. **Subrogation:** Subrogation refers to the process an insurance company uses to seek reimbursement from the responsible party for a claim it has already paid.

qq. **Subscriber:** A retiree enrolled in the Tennessee Plan (Medicare Supplement Plan).

rr. **Week, Calendar:** The traditional seven-day week, Sunday through Saturday.

A.18. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.19. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on July 1, 2016 ("Effective Date") and extend for a period of eighty-four (84) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Thirteen Million Five Hundred Seventy Six Thousand Five Hundred ($13,576,500) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

PMPM Rates by Plan Type and Calendar	PMPM January 1, 2017-December 31, 2017	PMPM January 1, 2018-December 31, 2018	PMPM January 1, 2019-December 31, 2019	PMPM January 1, 2020-December 31, 2020	PMPM January 1, 2021-December 31, 2021
State, Local Education, and Local Government Plans	$ 5.00 PMPM	$ 5.00 PMPM	$ 5.00 PMPM	$ 5.00 PMPM	$ 5.00 PMPM

The State shall compensate the Contractor monthly for all services outlined in this Contract, at the PMPM rates indicated, based upon the number of members certified by the State to the Contractor. The Contractor shall be paid based on enrollment counts calculated by the State's Enterprise Resource Planning (ERP) solution, otherwise known as Edison.

c. Claims Payments. The State will fund the Contractor for the total issue amount of the claims payments, net of cancellations, voids or other payment credit adjustments. Unless otherwise mutually agreed in writing by the parties, the Contractor shall notify the State of the funding amount required and the State will fund the Contractor weekly, provided that the Contractor's payment process includes timely settlement of ACH transactions. As the parties shall mutually agree in writing, the transfer of said funding to the Contractor for claims payments shall be effected weekly by either ACH debit from the Contractor to a designated State bank account.

(1) The Contractor acknowledges and agrees that since the State intends to fund payments at the time of issuance, the State will not maintain a separate bank account or an escrow account with the Contractor or to otherwise pre-fund an account.

(2) The State reserves the right to review documentation either before or after the transfer of funding for claims payments and, as the State may deem appropriate, to adjust the funding amount to be transferred or withhold the amount of any overpaid funding from another funding transfer.

(3) The Contractor acknowledges that funding for Claims Payments shall be adjusted in full consideration of the Contract Scope of Service requirement that the Contractor shall identify and pursue claims that may be subject to coordination of benefits (COB); see Contract Section A.3.l.

d. If member materials containing an error were approved by the State in writing and the error was detected after the materials were mailed, pursuant to Contract Section C.3.e., the State will reimburse the Contractor the production and postage cost of mailing the corrected version.

e. The State shall reimburse the Contractor for the following, selected actual costs in the performance of this Contract upon the Contractor providing documentation of actual costs incurred.

(1) Postage. In a situation where unanticipated plan modifications would require notification to plan members that is not detailed in the terms and conditions of this Contract, the State may request the Contractor to produce and mail such notification to plan members. In such extreme situations, The State shall reimburse the Contractor only for the actual cost of postage for mailing

materials produced at the specific direction of the State and authorized in writing by the State.

(2) Printing / Production. The State shall reimburse the Contractor an amount equal to the actual net cost of document printing / production or producing hard copies of materials as required and authorized in writing by the State and only in extreme situations as described in Contract Section C.3.e.(1).

Notwithstanding the foregoing, the State retains the right to authorize the Contractor to deliver a product to be printed, approve and accept the product but not use the Contractor to print the material. In those situations, the State shall have the discretion to use other printing and production services at its disposal.

f. The State authorizes the Contractor to retain monies received through subrogation, on a per patient basis, of no more than 5% of the gross recoveries received. If the Contractor utilized a subrogation subcontractor, the Contractor may retain an additional 20% of the gross recoveries, on a per patient basis. The Contractor's subrogation processes shall include the recovery of claims paid as a result of work related illnesses or injuries relative to worker's compensation claims. The net subrogation recoveries will be remitted to the State within 90 days of final settlement and receipt of funds by payment as agreed on by the state. Additionally, the Contractor will provide a report that itemizes cases information (including cases opened, pending and closed), year to date summary of recoveries, monthly non-response information, quarterly cases closed by Contractor, quarterly 'made whole' closures, and any other information deemed necessary by the State, to be submitted to the State monthly.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Monthly Payment to the Contractor. The State will provide the Contractor the enrollment counts for the State, Local Education, and Local Government Plans on a monthly basis. The enrollment figures for the following month's payment shall be the enrollment count on the last day of the prior month and shall be calculated through the State's Enterprise Resource Planning (ERP) solution, otherwise known as Edison. The first payment under this contract to the vendor shall be made during the month of January 2017 based on enrollment counts as of December 2016 for the January 2017 month of coverage.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State and a voided check or

bank verification letter. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Seannalyn Brandmeir, Procurement and Contracting Manager
Tennessee Department of Finance & Administration
Division of Benefits Administration
312 Rosa L. Parks Avenue, Suite 1900
Nashville, Tennessee 37243
Seannalyn.Brandmeir@tn.gov
Telephone: 615.532.4598
Fax: 615.253.8556

The Contractor:
Robert W. Pomfrey, President and CEO
POMCO, Inc.
2425 James Street
Syracuse, New York 13206
rpomfrey@pomco.com
Telephone: 315.432.9171 ext. 44223
Fax: 315.433.5454

with a copy to:
Donald C. Doerr, Esq.
POMCO, Inc.
2425 James Street
Syracuse, New York 13206
ddoerr@pomco.com
Telephone: 315.432.9171 ext. 44413
Fax: 315.703.4884

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination

in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Contract Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

4. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations

regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's

duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes
   1. Contract Attachment A Attestation Re Personnel Used in Contract Performance,
   2. Contract Attachment B Performance Guarantees and Liquidated Damages, and
   3. Contract Attachment C Reporting Requirements;
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking this Contract.

D.31. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.
All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.
The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to

give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2) The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

b. Workers' Compensation and Employer Liability Insurance

1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

ii. In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

i. The Contractor employees fewer than five (5) employees;

ii. The Contractor is a sole proprietor;

iii. The Contractor is in the construction business or trades with no employees;

iv. The Contractor is in the coal mining industry with no employees;

v. The Contractor is a state or local government; or

vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E.3. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," shall mean software not owned by the State or the Contractor.

(5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.5. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's response to RFP-31786-00134 (RFP Attachment 6.2, Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

E.6. Liquidated Damages. If the Contractor fails to perform in accordance with any term or provision of this contract, only provides partial performance of any term or provision of the Contract, violates any warranty, or any act prohibited or restricted by the Contract occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor

and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

E.7. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E. 8. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual

letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

IN WITNESS WHEREOF,

POMCO, Inc.:

6/14/16

CONTRACTOR SIGNATURE **DATE**

Robert W. Pomfrey, President + CEO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE,
STATE INSURANCE COMMITTEE,
LOCAL EDUCATION INSURANCE COMMITTEE,
LOCAL GOVERNMENT INSURANCE COMMITTEE:

6-16-16

LARRY B. MARTIN, COMMISSIONER **DATE**

CONTRACT ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	50292
CONTRACTOR LEGAL ENTITY NAME:	POMCO, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	15-0581348

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Robert W. Pomfrey, President + CEO

PRINTED NAME AND TITLE OF SIGNATORY

6/14/16

DATE OF ATTESTATION

CONTRACT ATTACHMENT B

PERFORMANCE GUARANTEES AND LIQUIDATED DAMAGES

To effectively manage contractual performance, the State has established performance guarantees to evaluate the Contractor's obligations with respect to the Contract. The Contractor is expected to perform according to a certain level of standards. If these standards are not met, the State is entitled to impose liquidated damage assessments. The list of Performance Guarantees and associated Liquidated Damages are included in this Attachment.

1. **Performance Reporting:** The Contractor shall develop a Performance Report Card as a means to measure compliance on a quarterly basis. The Contractor shall provide the quarterly performance report card in a manner acceptable to the State, on or before the 20th day of the month following the reporting quarter. Supporting documentation used to calculate the performance guarantees shall be provided with the Performance Report Card. The Performance Report Card shall include cumulative data over the life of the contract.
2. **Payment of Liquidated Damages:** It is agreed by the State and the Contractor that any liquidated damages assessed by the State shall be due and payable to the State within forty-five (45) calendar days after Contractor receipt of the Invoice containing an assessment of liquidated damages. If payment is not made by the due date, said liquidated damages may be withheld from future payments by the State without further notice.
3. **Maximum Assessment:** The maximum amount of Liquidated Damages payable over any twelve (12) month period shall not exceed five percent (5%) of the annual maximum liability in the Contract at the beginning of the calendar year during which the assessments occurred. In the event that a single occurrence subjects the Contractor to Liquidated Damages in multiple subsections of this provision, the State is entitled to assess a single Liquidated Damage selected at the discretion of the State.
4. **Waiver of Liquidated Damages:** The State, in its sole discretion, may elect not to assess Liquidated Damages against the Contractor in certain instances, including but not limited to the following:
    a. Where the State determines that only inconsequential damage has occurred, unless the deficiency is part of a recurring or frequent pattern of deficiency, with regard to one (1) or more Contract deliverables or requirements
    b. For performance measures that are resolved based on the Contractor's corrective action plan
    c. If the failure is not due to Contractor fault (i.e. caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its staff or subcontractors)
    d. Where no damage or injury has been sustained by the State or its Members
    e. Where the failure does not result in increased Contract management time or expense
    f. Where the failure results from the State's failure to perform
    g. For other reasons at the State's sole discretion
5. **General Liquidated Damages:** In the event that the Contractor has failed to meet a performance guarantee that is set out in the Contract, but for which the Liquidated Damage standards are not spelled out in this Attachment, the State may assess liquidated damages under this General Liquidated Damages provision. The liquidated damages may be assessed at the rate of five hundred dollars ($500.00) per business day until the guarantee has been met.
6. The Contractor shall pay to the State the indicated total dollar assessment upon notification by the State that an amount is due, through the term of this Contract.
7. As prior approved by the State in writing, performance guarantees shall be measured specific to the Public Sector Plans or on the Contractor's book of business.

Start-up (see Contract Section A.15.e.)	
	All services required by this contract between the "contract start date" and the "go-live" date as specified in contract section A.15.e. shall be completed as specified.
Assessment	One thousand dollars ($1,000.00) for each day beyond the deadline that any service deliverable is not completed.
Measurement	Measured, reported, reconciled, and paid no later than three (3) months after the go-live date.
2. Enrollment Set-Up (see Contract Section A.11.e.)	
Guarantee	Enrollment information shall be loaded, tested, verified and available online for use no later than thirty (30) days prior to the go-live date specified in Contract Section A.15.e.
Assessment	Five hundred ($500) for each day beyond the date specified in Contract Section A.15.e.
Measurement	Measured, reported, reconciled and paid no later than three (3) months after the go-live date.
3. Enrollment Posting (see Contract Section A.11.e.)	
Guarantee	One hundred percent (100%) of electronically transmitted enrollment updates, including the resolution of any errors identified during processing, shall be processed within four (4) business days of receipt of the weekly file as required in Contract Section A.11.e.
Assessment	One hundred dollars ($100) per day for the first (1st) and second (2nd) business days out of compliance; five hundred dollars ($500) per business day thereafter.
Measurement	Measured and reported weekly; reconciled and paid quarterly.
4. Enrollment Discrepancies (see Contract A.11.e.)	
Guarantee	Resolve all enrollment discrepancies (any difference of values between the State's database and the Contractor's database) as identified within one (1) business day of notification by the State or identification by the Contractor, as required in Contract Section A.11.e.
Assessment	Per discrepancy, one hundred ($100) per day for the first (1st) and second (2nd) business days out of compliance; five hundred ($500) per business day thereafter.
Measurement	Measured and reported quarterly; reconciled and paid quarterly.
5. Program Go-Live (see Contract Section A.15.)	
Guarantee	All services required by this contract shall take effect (i.e. "go-live") and be fully operational on January 1, 2017.
Assessment	One thousand dollars ($1,000.00) for each day beyond the deadline that all services are not fully operational.
Measurement	Measured, reported, reconciled, and paid no later than four (4) months after the go-live date.
6. Approval of Communication Materials (see Contract Section A.4.f.)	
Guarantee	All materials, including but not limited to: ID cards and letters, produced by the Contractor shall be provided to the State for review and prior to planned printing, assembly, and/or distribution, as required in Contract Section A.4.f.
Assessment	One thousand dollars ($1,000.00) for each occurrence the standard is not met. An occurrence is defined as per mailing and not per mail piece.
Measurement	Reported, reconciled, and paid per occurrence through the duration of the Contract.
7. Tennessee Edison System Interface (see Contract Section A.11.)	
Guarantee	Contractor's interface with the Edison System shall be fully operational by the date specified in Contract Sections A.15.e.22., and the contractor shall maintain, from January 1, 2017 through the

CENTRAL PROCUREMENT OFFICE

	term of the contract, a valid interface with the Edison System.
ent	One thousand dollars ($1,000.00) per day for every day out of compliance.
Measurement	Fully operational shall mean the Edison Certification of Interface Acceptance has been executed and that weekly files obtained by the Contractor from the State's Edison system will be timely and accurately processed and the data loaded directly into the Contractor's production database. Ongoing measurement, reconciled quarterly, and quarterly assessment paid annually.
8. Average Speed of Answer (see Contract Section A.3.)	
Guarantee	The Contractor's call center shall maintain a monthly average speed of answer (ASA) of thirty (30) seconds or less, as required in Contract Section A.3.c.(1).
Assessment	One thousand dollars ($1,000) for each calendar month that the average speed of answer exceeds the threshold above.
Measurement	The Contractor shall calculate the number of instances during each day during which a caller's time-to-answer exceeds this threshold (based on Contractor's internal telephone support system reports) compared to the total number of calls per day. Measured and reported on a weekly basis during the thirty (30) days prior to the go-live date through sixty (60) days after the go-live date. Thereafter, measured and reported monthly. Reconciliation shall be quarterly and quarterly assessment paid annually.
9. First Call Resolution (see Contract Section A.3.)	
Guarantee	The Contractor's call center shall maintain a monthly average rate of eighty-five percent (85%) for first call resolution, as required in Contract Section A.3.c.(2).
Assessment	One thousand dollars ($1,000) for each calendar month that the average first call resolution rate exceeds the threshold above.
Measurement	The Contractor shall calculate the number of instances during each day during which a caller's initial call was answered without requiring a call back from the Contractor (based on Contractor's internal telephone support system reports) compared to the total number of calls. Measured and reported on a weekly basis during the thirty (30) days prior to the go-live date though sixty (60) days after the go-live date. Thereafter, measured and reported monthly. Reconciliation shall be quarterly and quarterly assessment paid annually.
10. Management Reporting (see Contract Section A.14.)	
Guarantee	All reports shall be delivered as specified in Section A.14 and Contract Attachment C, unless otherwise directed by the state.
Assessment	One hundred dollars ($100.00) for each report not delivered within the time frame specified in the contract.
Measurement	Measured based on report due date (weekly, monthly, quarterly, semi-annually, and annually); Reconciled quarterly and quarterly assessment paid annually.
11. Privacy and Security of Member Information (see Contract Section A.12)	
Guarantee	The Contractor shall not release, intentionally or unintentionally, members' personal information, enrollment information, or claims information to unauthorized parties.
Assessment	For breaches affecting fewer than five hundred (500) members: Two thousand five hundred dollars ($2,500) for the first violation, five thousand dollars ($5,000) for the second violation and ten thousand dollars ($10,000) for the third and any additional violations. For breaches affecting five hundred (500) or more members: Twenty-five thousand dollars ($25,000) per violation. The assessment will be imposed on a per incident basis and the assessment will be levied on the graduated basis detailed above.

	In the event Contractor is responsible for Federal Penalties related to a Privacy or HIPAA violation, the State may, at its discretion waive any Liquidated Damages due the State in association with the same violation.
Measurement	Measured, reported, reconciled, and paid per occurrence.
12. Member Satisfaction (see Contract Section A.8.j.)	
Guarantee	The level of overall customer satisfaction, which is measured annually by a State-approved Member Satisfaction Survey, will be eighty-five percent (85%) or greater in the first year of the contract and equal to, or greater than, ninety percent (90%) in all subsequent years of the contract term.
Assessment	Ten thousand dollars ($10,000.00) for failure to reach the guarantee.
Measurement	Measured, reported, reconciled and paid annually.
13. Claims Payment Accuracy *(see Contract Section A.9.c.)*	
Guarantee	Claims payment accuracy shall be ninety-eight percent (98%) or higher, as required in Contract Section A.9.c.
Assessment	One thousand dollars ($1,000) for each full percentage point below ninety-eight percent (98%) for each contracted quarter.
Measurement	Quarterly internal audit performed by the Contractor on a statistically valid sample. Measured and reported on a calendar quarter basis; reconciled annually on a calendar year basis.
14. Claims Processing Accuracy *(see Contract Section A.9.c.)*	
Guarantee	Claims processing accuracy shall be ninety-seven percent (97%) or higher, as required in Contract Section A.9.c.
Assessment	One thousand dollars ($1,000) for each full percentage point below ninety-seven percent (97%), for each contracted quarter.
Measurement	Quarterly internal audit performed by the Contractor on a statistically valid sample. Measured and reported on a calendar quarter basis; reconciled annually on a calendar year basis.
15. Claims Processing Turnaround (see Contract Section A.9.c.)	
Guarantee	The Contractor shall process within twenty-one (21) calendar days ninety-eight percent (98%) or higher of clean claims, as required in Contract Section A.9.c.
Assessment	Five thousand dollars ($5,000) for each full percentage point below the required minimum standard of ninety-eight percent (98%) within twenty-one (21) days.
Measurement	Quarterly internal audit performed by the Contractor on a statistically valid sample. Measured and reported on a calendar quarter basis; reconciled annually on a calendar year basis.
16. Unauthorized Usage of Information	
Guarantee	Unless prior approved in writing by the State, and in compliance with State and Federal law, the Contractor shall not use information gained through this Contract, including but not limited to utilization and pricing information, in marketing or expanding non-State business relationships or for any pecuniary gain.
Assessment	One hundred dollars ($100) per impacted member per instance unless that cannot be determined in which case the assessment shall be one hundred dollars per enrollee per instance.
Measurement	Measured, reported, reconciled upon identification of occurrence.

CONTRACT ATTACHMENT C

REPORTING REQUIREMENTS

As required by Contract Section A.14., the Contractor shall submit Management Reports to the State. The reports shall be used by the State to assess the Medicare Supplement Plan costs and utilization as well as reconcile the Liquidated Damages. All reports shall be submitted in Microsoft Excel format, unless otherwise specified by the State, and shall be sent to the State via secure email.

Unless otherwise directed by the State, the Contractor shall submit reports as follows:

1)Weekly reports shall be submitted by Tuesday of the following week;

2)Monthly reports shall be submitted by the 15th of the following month;

3)Quarterly reports shall be submitted by the 20th of the following month;

4)Semi-Annual Reports shall be submitted by the 20th of the following month;

5)Annual reports shall be submitted within sixty (60) days after the end of the calendar year.

Reports shall include:

1) **Performance Guarantees and Liquidated Damages Tracking**, as detailed in Contract Attachment B, each component to be listed with guarantee and actual results, submitted quarterly and annually using the template prior approved in writing by the State; the report shall also include a narrative statement regarding the status of each item

2) **Monthly Invoice/Reconciliation Report**, submitted monthly by secure email in Excel using the template prior approved in writing by the State.

3) **Monthly Recoveries (Refund) Report**, submitted monthly by secure email in Excel using the template prior approved in writing by the State.

4) **Quarterly Fraud and Abuse Report**, submitted quarterly by secure email using the template prior approved in writing by the State.

5) **Quarterly Appeals Report**, submitted quarterly by secure email in Excel using the template prior approved in writing by the State.

6) **Call Center Activity Reports**, as detailed in Contract Section A.3.d, submitted weekly, then monthly.
   a. Average Speed of Answer – statistics to support an average speed of answer (ASA) of thirty (30) seconds or less for monthly calls
   b. First Call Resolution – statistics to support a monthly average rate of ninety-two percent (92%) for first call resolution
   85%

7) **Annual Member Satisfaction Survey Report**, submitted annually by agreed upon date by secure email using the template prior approved in writing by the State.

8) **Annual Account Team Satisfaction Survey Report**, submitted annually using the template prior approved in writing by the State

9) **Annual BC/DR Test Results Report**, submitted annually by email using the template prior approved in writing by the State.

10) **Weekly File Transmission Statistics Report**, submitted by secure email within five (5) business days of receipt of the weekly enrollment update file using the template prior approved in writing by the State.

11) **Quarterly Enrollment System Modification Log**, submitted quarterly by secure email using the template prior approved in writing by the State.

12) **Subrogation Reports**, submitted as directed by the State to summarize Subrogation experience for the Plan during a specific time period.

Weekly Claims Funding Request, submitted by secure email using the template prior approved in writing by the State.

Quarterly Paid Claims Analysis Report, submitted quarterly by secure email using the template prior approved in writing by the State.

15) **Quarterly Paid Claims Lag Report,** submitted quarterly by secure email using the template prior approved in writing by the State.

16) **Ad-Hoc Reports,** The Contractor shall submit such ad-hoc reports as are deemed by the State to be necessary to analyze the DPPO Program. The exact format, frequency and due dates for such reports shall be mutually agreed upon with the Contractor and shall be submitted at no cost to the State.

CONTRACT ATTACHMENT D

HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Finance and Administration, Division of Benefits Administration** (hereinafter "Covered Entity") and **POMCO, Inc.** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledge that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

Business Associate provides services to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts."

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

Contract Name:	**Execution Date:**
Self-insured Medicare Supplement Plan	**January 1, 2017**

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

1. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.402, 164.501, and 164.504.

1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107

1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.5 "Electronic Protected Health Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107

1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107

1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).

1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.

1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.

1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 164.304.

1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.

2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any

or the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other ntial information, to agree, by written contract with Business Associate, to the same restrictions and ns that apply through this Agreement to Business Associate with respect to such information.

2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.

2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.7.1 Business Associate shall provide to Covered Entity notice of a Potential or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.

2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.

2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least t 30 business days from Covered Entity notice to make an amendment.

2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.

2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the n amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance requirements of the Privacy Rule.

2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.

2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.

2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any

incident of which is becomes aware, including breaches of unsecured protected health information as l by 164.410. Business Associate shall promptly report any Security Incident of which it becomes aware red Entity. Provided however, that such reports are not required for attempted, unsuccessful Security incidents, including trivial and routine incidents such as port scans, attempts to log-in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.

3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.

3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

State of Tennessee
Benefits Administration
HIPAA Privacy & Security Officer
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Towers
Nashville, TN 37243-1102
Phone: (615) 770-6949
Facsimile: (615) 253-8556

With a copy to:

State of Tennessee
Benefits Administration
Contracting and Procurement Manager
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Towers
Nashville, TN 37243-1102
Phone: (615) 532-4598
Facsimile: (615) 253-8556

3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Kathleen Lamb, General Counsel
POMCO, Inc.
2425 James Street
Syracuse, NY 13206
Telephone: (315) 432-9171 x 4462
klamb@pomco.com

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement in writing within ten (10) business days.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]

xcept as otherwise limited in this Agreement, Business Associate may use PHI as required for Business te's proper management and administration or to carry out the legal responsibilities of the Business te.

4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).

4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreement with any Subcontractor or agent which Business Associate provides access to Protected Health Information.

4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.

5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

CENTRAL PROCUREMENT OFFICE

RM AND TERMINATION

'erm. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.

7.2 Termination for Cause.

7.2.1. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1. Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2. If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3. If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

7.3.1. Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible, Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.

8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless

ner this Agreement has been formally amended, including, but not limited to changes required by the n Recovery and Reinvestment Act of 2009, Public Law 111-5.

8.3 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

8.5 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:
State of Tennessee
Department of Finance and Administration
Benefits Administration
ATTN: Chanda Rainey
HIPAA Privacy & Security Officer
312 Rosa L. Parks Avenue
1900 W.R.S. Tennessee Towers
Nashville, TN 37243-1102
Phone: (615) 770-6949
Facsimile: (615) 253-8556
E-Mail: benefits.privacy@tn.gov

With a copy to:
ATTN: Seannalyn Brandmeir, Esq.
Procurements & Contracting Manager
At the address listed above
Phone: (615) 532-4598
Facsimile: (615) 253-8556
E-Mail: seannalyn.brandmeir@tn.gov

BUSINESS ASSOCIATE:
Robert W. Pomfrey, President and CEO
POMCO, Inc.
2425 James Street
Syracuse, New York 13206
rpomfrey@pomco.com
Telephone: 315.432.9171 ext. 44223
Fax: 315.433.5454

With a copy to:
Donald C. Doerr, Esq.
POMCO, Inc.
2425 James Street
Syracuse, New York 13206
ddoerr@pomco.com
Telephone: 315.432.9171 ext. 44413
Fax: 315.703.4884

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

8.6 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement

8.7 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.

mpensation. There shall be **no** remuneration for performance under this Agreement except as specifically d by, in, and through, existing administrative requirements of Tennessee State government and services s referenced herein.

8.10 Security Breach A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

Kathleen Lamb, General Counsel 6/13/16

CONTRACTOR SIGNATURE **Date:**

Larry B. Martin 6/16/16

Larry B. Martin, Commissioner of Finance & Administration **Date:**